

Our Ref: CWWTPR.D7.CS

Your Ref: WW010003

Date: 12 April 2024

**Planning Act 2008: Application by Anglian Water Limited for an Order Granting Development Consent for the Cambridge Waste Water Treatment Plant Relocation project (CWWTPR) (ref: WW010003) -**

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**CLOSING SUBMISSIONS ON BEHALF OF  
CAMBRIDGESHIRE COUNTY COUNCIL**

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**INTRODUCTION**

1. These are the closing submissions on behalf of Cambridgeshire County Council principally in its capacity as Minerals and Waste Planning Authority; Local Highway Authority<sup>1</sup> and Lead Local Flood Authority ('the County Council') following the examination conducted by the Examining Authority ('the ExA') into the application by Anglian Water Limited ('the Applicant') pursuant to the Planning Act 2008 for an Order Granting Development Consent ('DCO') in respect of the Cambridge Waste Water Treatment Plant Relocation project ('CWWTPR' or 'the project').
2. Aside from the County Council's capacities referred to above, the County Council is also the Fire Authority (including public safety), Public Health Authority, Education Authority, and Social Services Authority for the County of Cambridgeshire.
3. The County Council's position has been set out in its respective Relevant Representation [RR-01] and Written Representation [REP1-135] as well as its responses to the ExA's questions. In addition, the ExA has before them the County Council's Local Impact Report ('the LIR') [REP1-133] the ExA will also see the final Statement of Common Ground agreed between the Applicant and the County Council.

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<sup>1</sup> as well as Traffic authority, Transport authority and Definitive Map authority

4. All of this evidence should, of course, be taken into account collectively and read in light of the issues that have been raised and evolved in response to the ExA's examination.
5. The purpose of these submissions, as with those of South Cambridgeshire District and Cambridge City Councils ('SCDC and the City Council') set out in their joint closing, is not to seek to repeat that evidence but the County Council consider it would be of assistance to the ExA and ultimately the Secretary of State ('the SofS') to confirm its understanding and position in respect of the legal framework for the consideration and decision taking of this DCO application and certain issues which have been raised. These submissions clearly echo and reflect submissions made by the SCDC and the City Council in their own closing submission.

#### **THE NATURE OF THE PROJECT UNDER THE PLANNING ACT 2008**

6. The County Council concurs with submissions made by SCDC and the City Council in their closing which refer to the s35 Direction made by the Secretary of State (SofS) dated 18 January 2021 (Appx 3 Planning Statement [REP1-049) and which mean the proposed development is to be treated as a matter of law as a "*development for which development consent is required*" (see s35 (1)) and confirms the SofS's "*opinion that the proposed development, known as the Cambridge Waste Water Treatment Plant Relocation Project, is of national significance*".
7. The County Council confirms their agreement with the SCDC and the City Council that the s35 Direction is clearly a key document for the ExA's considerations and the final determination of the SofS in respect of this DCO application.

#### **NPS – SECTION 104 AND 105**

8. The County Council also concurs with the submissions made by the SCDC and the City Council as to the decision-making framework provided by Ss 104 and 105 of the PA 2008 and the role of the National Policy Statement for Waste Water (NPSWW).

## **ROLE OF THE COUNTY COUNCIL and LOCAL IMPACT REPORT**

9. The County Council is a relevant authority under the PA 2008 because the land the subject of the DCO lies within its area (see s43(1) and 56A) and as such clearly falls within the definition of an authority to which the SofS “*must give notice in writing...inviting them to submit a local impact report*” (see s60 PA 2008).
10. The County Council in its LIR [REP1-133.] in complying with its statutory role within this process under the PA 2008 as a ‘relevant authority’ has addressed matters not only from the perspective of its role as the relevant Waste and Minerals Planning Authority but also on matters that arise in respect of the County’s highway authority and other statutory functions where relevant.
11. In terms of its capacity, as the Waste and Minerals Planning Authority it is relevant of course that, compared with the position of the SCDC and City Council, a Waste Water Treatment Plant and Water Recycling Centre would, if it were not the subject of the s35 Direction and hence subject to a DCO application under the PA 2008 , be categorised as waste development<sup>2</sup> which would require planning permission to be sought from and granted by the County Council as determining authority under the provisions of the Town and Country Planning Act 1990 and Planning and Compulsory Purchase Act 2004.
12. In carrying out that role the County would assess such a proposal against the Cambridgeshire and Peterborough Minerals and Waste Local Plan (MWLP) 2021 as well as the relevant Local District Plan policies alongside National Planning Policy (including the National Planning Policy Framework and National Planning Policy for Waste). In applying the relevant adopted local plans (in this instance those would currently be the South Cambridgeshire Local Plan 2018 and Cambridge City Local

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<sup>2</sup> Hence a “*County matter*” pursuant to reg 2 of the Town and Country Planning (Prescription of County Matters) (England) Regulations 2003 as a class of development involving “(a) (i) *the use of land;*  
(ii) *the carrying out of building, engineering or other operations; or*  
(iii) *the erection of plant or machinery used or proposed to be used,*  
*wholly or mainly for the purposes of recovering, treating, storing, processing, sorting, transferring or depositing of waste;*  
(b) *the use of land or the carrying out of operations for any purposes ancillary to any use or operations specified in paragraph (a) above, including the formation, laying out, construction or alteration of a vehicular access to any public highway.*”

Plan 2018) and also in considering any planning issues that relate to matters affecting the interests of SCDC and/or the City Council, the County would clearly consult and be informed and guided by the views of SCDC and the City Council. The process of course would also clearly involve consulting closely with other Statutory Consultees and notifying the public to seek their views.

13. In making representations as a relevant authority and interested party to this DCO application the County Council has been guided by the fact that it is not the decision maker and that the legal framework and considerations under the PA 2008 are not the same as under the 1990 Act and 2004 Act. To that end the County Council does not consider that a DCO application (even if it arises out of a s35 Direction) is equivalent to a direction by the SofS under s77 of the 1990 Act that the local planning authority refer an application to him for his decision (i.e. call in application).
14. The County Council has therefore not sought to step into the ExA's and SofS's role as decision maker nor carry out a hypothetical exercise equivalent to that which it *would* carry out if it *was* the decision maker for a similar scheme under the 1990 Act and 2004 Act.
15. That is because, in simple terms, such an exercise would demand a parallel consultation exercise, EIA process and consideration of the planning balance which would ultimately be an entirely false one to which little if any weight could be accorded as well as being an inappropriate submission in the context of this DCO application.
16. There is nothing within the PA 2008 or the secondary legislation that requires such an exercise to be carried out and form part of the SofS's determination. Nor is there anything within the SofS's guidance in respect of the DCO applications or indeed the Planning Inspectorate's Advice Notes that suggest or even encourage a relevant authority to go as far as reaching a conclusion as to whether it would have granted or refused the development proposal if it had been the subject of a planning application under the separate legal framework of the 1990 Act and 2004 Act.

17. Clearly however the County Council recognises the importance of submitting a Local Impact Report and to which the SofS “*must have regard*” when “*deciding the [DCO] application*” (see s104(2) (b) and s105(2)(a)).

18. S.60(3) defines an LIR as “(3)... *a report in writing giving details of the likely impact of the proposed development on the authority’s area (or any part of that area).*” and the County Council also had regard to the principal guidance with regard to LIRs and how relevant authorities should approach them set out in set out the Planning Inspectorate’s Advice Note 1.

19. The Advice Note in particular states:

*“The sole definition of an LIR is given in s60(3) of the Act as ‘a report in writing giving details of the likely impact of the proposed development on the authority’s area (or any part of that area)’. The content of the LIR is a matter for the local authority concerned as long as it falls within this statutory definition....*

*....Local authorities should cover any topics they consider relevant to the impact of the proposed development on their area.*

*Local authorities should set out clearly their terms of reference for the LIR. The LIR should be used by local authorities as the means by which their existing body of local knowledge and evidence on local issues can be fully and robustly reported to the Examining Authority.*

*There is no need for the LIR to replicate the EIA. Nor is it necessary to replicate any assessment already produced in respect of the site such as those included in National Policy Statements. Rather, it should draw on existing local knowledge and experience. Examples might be local evidence of flooding, local social or economic issues or local knowledge of travel patterns to community facilities.*

*In producing a LIR, the local authority is not required to carry out its own consultation with the community...*

*The report should consist of a statement of positive, neutral and negative local impacts, but it does not need to contain a balancing exercise between positives and negatives; nor does it need to take the form of a formal committee report.*

*The Examining Authority will carry out a balancing exercise of relevant impacts, and these will include those local impacts specifically reported in the LIR.*

*By setting out clearly evaluated impacts in a structured document, local authorities will assist the Examining Authority by identifying local issues which might not otherwise come to its attention in the examination process. It will also be very helpful to have the local authority’s appraisal of the proposed development’s compliance with local policy and guidance.*

....

*There is, however, no need for the local authority to undertake an assessment of compliance with an NPS; this would duplicate the Examining Authority's role..”*

20. The County Council has acted in accordance with this guidance. It has, in particular, provided in the LIR (and any further clarifications and responses to the ExA) appraisals of the proposed development's compliance with local policy and guidance without carrying out any *“balancing exercise between positives and negatives”* to form an overall view. This has necessarily meant however in those instances where a policy itself requires such a balancing exercise to establish compliance or not that the Council has stopped short of reaching that final determination. The County Council has been pressed upon this stance during the examination and it is hoped that the ExA and the SofS understands why the Council's position in the circumstances is the appropriate one.
21. The principal example of where the County Council has found it necessary to take this approach is with regard to the application of Policy 5 of the MWLP in respect of Mineral Safeguarding Areas (MSAs). This policy contains a criterion where development is proposed within an MSA (which is not covered by an exception) that such development *“will only be permitted where it has been demonstrated that:... 1) there is an overriding need for the development (where prior extraction is not feasible)\*\*.”* The Policy then goes on to explain that *“\*\* within (1) ‘overriding need’ will need to be judged in the planning balance when any planning application is assessed, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy. That judgement should also consider the cost of, and scope for, developing outside the MSA, or meeting the need for it in some other way. By ‘not feasible’ in (1), this could include viability reasons.”*
22. The County Council has confirmed that criterion (1) would apply however it is clear that, in order to conclude whether this DCO proposal can be treated as complying with this policy, an overall planning balance exercise would need to be carried out as to whether an overriding need for the scheme is met. Such an exercise would overstep into the realm of the SofS's exclusive exercise of carrying out the planning balance as decision maker for this DCO. In addition, as set out above, in order for the County Council to form such a hypothetical conclusion before this examination, as if the

development was in fact within its own purview, would require a full consultation exercise on its own account with statutory consultees and relevant authorities.

23. The County Council considers such an exercise goes well beyond what is required and expected of a relevant authority and could also ultimately risk being an unlawful fetter on its discretion in the event that in future a similar or alternative scheme to this proposal were to come before it as decision maker.

24. As such the County Council has approached its assessment of this DCO scheme within the appropriate legal constraints and provided conclusions on compliance with the MWLP where it is legally able.

### **CONCLUDING SUBMISSIONS**

25. The County Council trusts it has been of assistance to the ExA in its representations and respectfully ask that the ExA in reporting upon this DCO application and the SofS in determining take full account of the above position.

**CELINA COLQUHOUN**

**39 ESSEX CHAMBERS**

**12 APRIL 2024**